

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

12 DANIEL JAMES TREBAS, ) No. CV 08-4809-FMC (PLA)  
13 Plaintiff, )  
14 v. ) **ORDER DISMISSING COMPLAINT  
15 ROBERT KNAPP, et al., ) WITHOUT LEAVE TO AMEND  
16 Defendants. )  
17 \_\_\_\_\_ )**

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19 On July 28, 2008, plaintiff filed a pro se civil rights action herein, after being granted leave  
20 to proceed in forma pauperis. Although plaintiff initially indicated that he intended to serve the  
21 Summons and Complaint on his own behalf, on August 14, 2008, plaintiff filed a motion seeking  
22 the assistance of the United States Marshal in serving the Complaint. Accordingly, the Magistrate  
23 Judge, pursuant to the mandate of the Prison Litigation Reform Act of 1995 ("PLRA"),<sup>1</sup> screened  
24 the Complaint prior to ordering service for the purpose of determining whether the action is  
25 frivolous or malicious; or fails to state a claim on which relief may be granted; or seeks monetary  
26 relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2).

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28 <sup>1</sup> The provisions of 28 U.S.C. § 1915(e)(2) apply to any individual proceeding in forma  
pauperis.

1       On August 27, 2008, the Magistrate Judge issued an Order Dismissing Complaint with  
 2 Leave to Amend, in which plaintiff was given until September 25, 2008, to file a First Amended  
 3 Complaint that remedied the deficiencies discussed in the Order. Instead, on September 15,  
 4 2008, plaintiff filed a “Notice of Appeal and Motion for Certifying [sic] of Appelate [sic] Issues; Writ  
 5 of Mandamus and Supplemental Prayer for Relief” (“Notice of Appeal”), in which he purported to  
 6 appeal the Magistrate Judge’s Order. The Court construed the Notice of Appeal as a motion for  
 7 the Court to certify the Magistrate Judge’s Order Dismissing Complaint with Leave to Amend for  
 8 an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), and denied the request in an Order filed  
 9 September 29, 2008.

10       At the same time that plaintiff filed his Notice of Appeal herein, he filed a similar request  
 11 with the Ninth Circuit Court of Appeals. On November 5, 2008, the Ninth Circuit dismissed that  
 12 appeal for lack of jurisdiction, finding that the order that plaintiff challenged was not final or  
 13 appealable.

14       On November 6, 2008, the Magistrate Judge issued a Minute Order informing plaintiff that  
 15 his Notice of Appeal had been denied by this Court as well as by the Ninth Circuit Court of  
 16 Appeals. The Magistrate Judge instructed plaintiff to file a First Amended Complaint by no later  
 17 than November 21, 2008, remedying the deficiencies discussed in the Order Dismissing Complaint  
 18 with Leave to Amend. Plaintiff was advised that, should he fail to file a First Amended Complaint  
 19 or fail to remedy the deficiencies in the original Complaint, the Magistrate Judge would  
 20 recommend that the action be dismissed.

21       On November 18, 2008, plaintiff filed a “Response and Notice Re: Court’s Proceeding and  
 22 Order from Nov. 6, 2008” (“Plaintiff’s Response”). Plaintiff informed the Court therein that he was  
 23 “unable to amend the original complaint into any form that would be acceptable by this court.”  
 24 Plaintiff also stated that he “will not be filing an amended complaint pursuant to [the Magistrate  
 25 Judge’s] Order of November 6, 2008,” and appears ready to file a notice of appeal upon entry of  
 26 a “clearly official and unequivocally [sic] obvious final judgement [sic] from this court.” (Plaintiff’s  
 27 Response at 2-3).

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1       Accordingly, for the reasons set forth in the Magistrate Judge's Order Dismissing Complaint  
2 with Leave to Amend, plaintiff's Complaint is dismissed without leave to amend, and judgment  
3 shall be entered dismissing the action for failure to state a claim, but without prejudice to plaintiff  
4 bringing the action as a habeas petition.

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6 DATED: December 2, 2008  
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7 HONORABLE FLORENCE-MARIE COOPER  
8 UNITED STATES DISTRICT JUDGE  
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9 Presented by:  
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12 PAUL L. ABRAMS  
13       United States Magistrate Judge  
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